

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
NO. 07-CR-296 (JNE/RLE)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	PLEA AGREEMENT AND
v.)	SENTENCING STIPULATIONS
)	
FRANK MITCHELL GURNO,)	
)	
Defendant.)	

The United States of America and defendant Frank Mitchell Gurno (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. **Charges**. The defendant agrees to plead guilty to Count 1 of the Indictment, which charges him with Involuntary Manslaughter, in violation of 18 U. S. C. Sections 1112, 1151, and 1153(a).

2. **Factual Basis**. The defendant agrees that:

- a. He is currently an enrolled member of the Red Lake Band of Chippewa Indians, and was an enrolled member on June 2, 2007.
- b. Edward John Maxwell was an enrolled member of the Red Lake Band of Chippewa Indians on June 2, 2007.

- c. On the morning of June 2, 2007, the defendant was driving a motor vehicle west on Minnesota State Highway 1 between the towns of Redby and Red Lake. The described location is within the boundaries of the Red Lake Indian Reservation, in the State and District of Minnesota.
- d. In the above-described location, while the defendant was driving recklessly, in excess of the posted 50 mph speed limit and after he had been drinking alcohol, the motor vehicle that the defendant was driving struck Edward John Maxwell, a pedestrian, causing Maxwell's death.

3. **Statutory Penalties.** The parties agree that Count 1 of the Indictment carries statutory penalties of:

- a. a maximum term of 6 years imprisonment;
- b. a maximum supervised release term of 3 years;
- c. a fine of up to \$250,000;
- d. a mandatory special assessment of \$100; and
- e. assessment to the defendant of the costs of prosecution, imprisonment, and supervision.

4. **Revocation of Supervised Release.** The defendant understands that if he violates any condition of supervised release, defendant could be sentenced to an additional term of imprisonment up to the length of the original supervised release

term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

5. **Guideline Calculations.** The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. The parties also acknowledge that the Court will utilize the United States Sentencing Guidelines to determine the appropriate sentence, and stipulate to the following guideline calculations:

- a. Base Offense Level. The parties agree that the base offense level for the offense is 22. U.S.S.G. § 2A1.4(a)(2)(B).
- b. Specific Offense Characteristics. The parties agree that no other specific offense characteristics apply.
- c. Chapter 3 Adjustments. The parties agree that none of the adjustments in Chapters 3A through 3C apply.
- d. Acceptance of Responsibility. The government agrees to recommend that the defendant receive a 3-level reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea hearing, (ii) the defendant cooperates with the Probation Office in

the pre-sentence investigation, and (iii) the defendant commits no further acts inconsistent with acceptance of responsibility. U.S.S.G. § 3E1.1.

e. Total Adjusted Offense Level. The total adjusted offense level is 19.

6. Criminal History Category. Based on information available at this time, the parties believe that the defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.

7. Guideline Range. If the offense level is 19, and the criminal history category is I, the Sentencing Guidelines range is 30 to 37 months imprisonment.

8. Fine Range. If the offense level is 19, the fine range is between \$6,000 and \$60,000. U.S.S.G. § 5E1.2(c)(3).

9. Supervised Release. The supervised release range is at least two but not more than three years. U.S.S.G. § 5D1.2(a)(2).

10. Discretion of the Court. The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the

applicable guideline factors and the applicable criminal history category. The Court may also depart from the applicable guidelines. If the Court determines that the applicable guideline calculations or the defendant's criminal history category are different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

11. **Special Assessments.** The Guidelines require the defendant to pay a mandatory special assessment in the amount of \$100, due at or before the defendant's sentencing. U.S.S.G. § 5E1.3.

12. **Restitution.** The defendant understands and agrees that the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, applies and that the Court is required to order the defendant to make restitution to the victim of his crime. There is no agreement as to the amount of restitution. The defendant understands and agrees the Court may order the defendant to make restitution to any victim regardless of whether the victim was named in the indictment.

13. **Complete Agreement.** This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Date:

FRANK J. MAGILL, JR.
Acting United States Attorney

BY: WILLIAM J. OTTESON
Assistant U.S. Attorney

Date:

FRANK MITCHELL GURNO
Defendant

Date:

MANVIR K. ATWAL
Counsel for Defendant